criminately in both interstate and intrastate commerce;[9] or repairing an engine used in interstate commerce;[10] or repairing a track,[11] or a switch,[12] have all been held to come within the purview of the statute.

A recent decision of the United States Supreme Court goes further still in extending the scope of interstate employment. A workman injured while carrying a bag of bolts for the repair of a bridge used by the defendant company in both interstate and intrastate traffic, was held, by a divided court, to be employed in interstate commerce within the meaning of the act. *Pederson* v. *Delaware, Lockawanna, & Western Ry. Co.*, 33 Sup. Ct. 648. The court declared that the work of keeping such instrumentalities in a proper state of repair was so closely related to commerce as to be a part of it. The view of the majority in this case would seem to extend the statute beyond the limits of a reasonable construction. The bridge was only a potential agency of transportation, and the plaintiff's work could at most have only a remote and consequential effect on such transportation. The bridge may have needed repairs, but *non constat* that such repairs were essential to the continued use of the bridge. In such case the work might have been indefinitely postponed without in any way affecting commerce. It might as well be said that the man who made the bolts was also engaged in commerce. The sole business of common carriers, such as railroads, is transportation. The work of each employee has for its purpose the furtherance of transportation, but each employee does not occupy the same relation in respect to it. The work of some affects it directly and immediately, while that of others affects it only remotely and consequentially. Only those employees whose work has a direct and immediate effect on the actual movement of interstate traffic, should be held employed in interstate commerce within the meaning of the act. As was said by the same court in an earlier case:[13] "If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise * * * that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many matters purely domestic in their nature."

The recent cases, however, plainly show that the present tendency of the courts is to extend to the utmost limit the sphere of governmental control.

INDEBTEDNESS OF MUNICIPAL CORPORATIONS UNDER CONSTITUTIONAL AND STATUTORY LIMITATIONS.—Constitutional and statutory provisions, arbitrarily restricting the power of municipal corpora-

[9] Northern Pac. Ry. Co. *v.* Maerkl, 198 Fed. 1.
[10] Darr *v.* B. & O. Ry. Co., 197 Fed. 665.
[11] Zikos *v.* Oregon, etc., Ry. Co., 179 Fed. 893.
[12] Central Ry. Co. of N. J. *v.* Calsurdo, 192 Fed. 901.
[13] Hooper *v.* California, 155 U. S. 648.

tions and other subdivisions in a state to incur indebtedness, to a limited percentum of the taxable property, exist in many states [1] The usual provision prohibits the incurring of any indebtedness in any year in excess of the income and revenue for such year, unless a majority of the voters assent to such indebtedness, which in no year shall exceed a certain percentage of the assessed value of the taxable property at some particular assessment, usually the last, previous to the incurring of the indebtedness.[2]

The question of the validity of bonds issued in excess of the yearly income, under these provisions, has given rise to conflicting views. The chief point of controversy has been over the question as to when the indebtedness is actually incurred.

The assessment mentioned necessarily governs the amount of indebtedness which may be legally created. Logically then, the assessment must precede the actual incurring of the indebtedness.

A recent case holds that the phrase "previous to the incurring of the indebtedness" refers to the time when the bond issue is authorized and not to the time when actually made. *State* v. *Gordon* (Mo.), 158 S. W. 683. This is equivalent to holding that the debt is incurred when the bonds are voted, and any assessment not completed at that time cannot be considered. Other cases proceed upon the same reasoning.[3] This seems scarcely sound on a reasonable construction of the words "incurring of the indebtedness."

The mere sanction of the voters of the proposed bond issue does not create a debt. No "indebtedness" is "incurred" until the bonds are actually issued.[4] Though the proposed issue at the time of voting is in excess of the legal limit, yet if, at the time they are issued and sold, they are within the limit, the issue should be held valid.[5] The indebtedness is incurred only at the time of sale and issue.[6] It is enough therefore according to reason and the better rule, if the specified and sufficient assessment be completed before the actual issue, although at the time the vote was had, the assessment was insufficient.[7]

In order to be valid the bonds must of course, be authorized by the requisite votes at the time of the election, since these provisions,

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[1] Missouri, Virginia, Illinois, New Jersey, New York, Iowa, Kansas, Nebraska, Texas, South Carolina, Minnesota, Colorado, and others.

[2] See Mo. Const. Art. 10, §§ 12, 12a.

[3] State *v.* Babcock, 24 Neb. 640, 39 N. W. 783; Prickett *v.* City of Marceline, 65 Fed. 469. This case was decided correctly upon principle, the true question, however, not being presented directly, as the bonds here were treated by the court as issued at their date and interest was paid at that time which corresponded to the election. Railway *v.* Wilber, 63 Neb. 627, 88 N. W. 660. Here it seems that the facts were materially different and the court was not called upon to decide the real point involved in this discussion.

[4] Corning *v.* Board of Commissioners, 102 Fed. 59.

[5] Thompson Houston Electric Co. *v.* City of Newton, 42 Fed. 723.

[6] DILLON, MUN. CORP., 5 ed., 207; Dudley *v.* Board of Commissioners, 80 Fed. 672, 26 C. C. A. 82.

[7] Rathbone *v.* Board of Commissioners, 83 Fed. 125.

whether constitutional or statutory, are mandatory and must be strictly followed to render proceedings thereunder valid.[8]

It may be, however, that the entire amount proposed and voted may never become an actual debt; and a larger assessment, which would allow a larger indebtedness, may be complete before any obligation arises. An indebtedness can never arise in the absence of some obligation to pay.[9] Until then the relation of debtor and creditor does not exist, and there can be no legal liability.

It is argued, and correctly, that these municipal restrictions may apply to debts payable upon a future contingency.[10] Before there can be said to be any existing debt, however, the contingency must be sure to happen, regardless of any future action on the part of the municipality. If such future action is required, no debt arises until the action is had.[11] In a case of this kind, if the selling of the bonds may be regarded as a contingency, it is evident that it is a contingency requiring action, and no legal obligation arises until actual issue of the bonds.

It may be said here that in the hands of innocent holders, bonds which exceed the limit are void, *pro rata,* only to the extent of the excess.[12]

NOTICE TO AGENT AS NOTICE TO PRINCIPAL.—The rule that notice to the agent within the scope of his authority is notice to the principal, has three exceptions: 1. Where it is the agent's duty to some other principal not to disclose, as where an attorney acts for two clients.[1] 2. Where the person who claims the benefit of the notice has colluded with the agent to cheat or defraud the principal.[2] 3. Where the agent, though nominally acting as such, is really acting in his own or another's interest, and adversely to his principal.[3] This last exception, however, is qualified both on principle and by the weight of authority to the extent that even when the agent is adversely interested, yet notice to him is notice to the principal when the agent is the sole representative of the principal in that transaction, and the principal can claim only through his act. Thus where the president and the cashier of a bank discounted the note of a firm to which they belonged and fraudulently used the

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[8] State *v.* Cornwell, 40 S. C. 26, 18 S. E. 184.

[9] Quill *v.* Indianapolis, 124 Ind. 292, 23 N. E. 788; City of East St. Louis *v.* East St. Louis Gas & Coke Co., 98 Ill. 415, 38 Am. Rep. 97.

[10] Prince *v.* Quincy, 105 Ill. 138, 44 Am. Rep. 785; Spillman *v.* Parkersburg, 35 W. Va. 605, 14 S. E. 279.

[11] Burlington Water Co. *v.* Woodward, 49 Iowa 58.

[12] Schmitz *v.* Zeh, 91 Minn. 290, 97 N. W. 1049; McPherson *v.* Foster, 43 Iowa 48, 22 Am. Rep. 215; Nolan Co. *v.* Texas, 83 Tex. 182, 17 S. W. 823.

[1] Akers *v.* Rowan, 33 S. C. 451, 12 S. E. 165, 10 L. R. A. 705; Melms *v.* Pabst Brewing Co., 93 Wis. 153, 66 N. W. 518, 57 Am. St. Rep. 899.

[2] National Life Ins. Co. *v.* Minch, 53 N. Y. 144.

[3] Dillway *v.* Butler, 135 Mass. 479; Innerarity *v.* Merchants' Nat'l Bank, 139 Mass. 333, 52 Am. Rep. 710.